

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2354 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI DAVENBHAI VASAVA

Versus

DISTRICT MAGISTRATE BHARUCH

Appearance:

MR SATISH R PATEL for Petitioner

Mr. K.T. Dave, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. S.R. Patel for the petitioner and learned A.P.P. Mr. K.T. Dave for the respondents.

The petitioner has approached to this Court under Article 226 of the Constitution of India to claim a writ of habeas corpus and/or any appropriate direction to

quash and set aside the detention order dated 6-11-1998 passed by the respondent no.1-District Magistrate, Bharuch City, District Bharuch against the petitioner.

2. That vide impugned order dated 6-11-1998, the District Magistrate Bharuch in exercise of powers conferred by Sec.3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "PASA") ordered to detain the petitioner by holding that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of "PASA" and his criminal and antisocial activities are likely to adversely affect the maintenance of public order. The petitioner is ordered to be detained at Baroda Central Jail and to be treated as Class II prisoner. The impugned order is produced at Annexure "A" to the petition.

The petitioner-detenu has been supplied with the grounds of detention dated 6-11-1998, copy of which is produced at Annexure "C".

3. That the facts emerging from the grounds of detention supplied to the petitioner suggest that the respondent no.1 has considered three offences registered against the petitioner which are as under:

(A) CR no.36/98 registered at Jhagadiya Police Station on 21-2-1998 in respect to offences made punishable under Secs.147,148,337, 341 and 332, IPC as well as under Sec.3 & 4 of the Public Property Act.

In the said case it is alleged that the complainant-Ismail Habib Shaikh, an ST Bus driver was proceeding from Jhagadiya to Selba by driving Express Bus on 22-2-1998 at around 2.15 p.m. That when he passed through village Pipariya situated between Rajpardi and Jaspore it was around 7.45 p.m. and the complainant has seen 10 to 15 Adivasi youths standing in a mob there. That the persons of the said mob signalled the complainant-driver to stop the bus. However, the said ST bus being Express Bus and as there was no passenger to alight at the said stoppage the complainant did not stop the bus and proceeded further. It is alleged by the complainant that at around 8 O'clock when he was passing on the said road at the place near "Vadjiya Dungar" he found in his rear view mirror that one truck was chasing the bus. That within a short period the truck overtook the bus of the complainant and compelled the complainant

to stop the bus by stopping the truck on the road. That about 10 to 15 persons got down from the truck and started pelting stones on the bus, and thereby, caused damage to the headlight screen and other parts of the body of the bus. The complainant being afraid of the attack hid himself behind the seat. In the meanwhile, persons of the said mob got into the bus and assaulted the conductor. The conductor was severely beaten and on account of said incident offence was registered. That during the investigation, it was revealed through the statement of the truck driver that present petitioner alongwith his accomplice have asked the truck driver to take them towards Vadjiya Dungar and on the road when they saw the bus, the petitioner asked the driver to overtake the bus and compelled the bus driver to stop the bus. It may be noted that the petitioner was released on bail in the said criminal case on 15-4-1998 and proceedings of trial is pending in the Court.

(B) CR no.39/98 registered at
Jhagadiya Police Station on
24-2-1998 in respect to offences
made punishable under Secs.147,
341, 342, 323 and 506(2) of IPC

It is alleged against the petitioner that he and his accomplice having formed an unlawful assembly had gone to GMDC mines where lignite was being loaded in trucks for transportation. That 10 to 12 trucks were already loaded and the remaining 80 to 90 trucks were standing in a line. That the petitioner and his accomplice asked the drivers of the said trucks to accompany them so as to join the trucks in a rally and added that if they did not agree the petitioner and his accomplice would set the said trucks ablaze. Not only that but when some of the drivers questioned as to how they can go to other place when they were on duty, the accomplice of the petitioner started beating those drivers and thereby, the drivers being afraid of the petitioner and his accomplice submitted to the demand of the petitioner, and as such, the petitioner and his accomplice forcibly took the said trucks along with the drivers for which offence was registered. It may also be noted that in the said case also, petitioner was released on bail on 15-4-1998 and the case is pending for trial.

(C) CR no.71/98 registered at Jhagadiya
Police Station on 13-4-1998 in respect to
offences made punishable under Secs.452,
323, 504, 506(2), IPC.

It is alleged in the grounds of detention that on 13-4-1998, the petitioner had visited the house of one Uniben w/o Gelabhai Govalbhai situated at village Bhilwada. The petitioner entered into the house and enquired about one Vajabhai and Jeetendrabhai the sons of elder sister of Uniben. That as both Vajabhai and Jeetendrabhai had gone for labour work they were not found in the house. The petitioner thereby started shouting and gave threats to the mother of Vajabhai and Jeetendrabhai that he is going to kill both of them. On enquiry by complainant-Uniben as to why the petitioner was going to kill Vajabhai and Jeetendrabhai, the petitioner got enraged and started beating her with the stick whereby she sustained injuries on her hand. The petitioner thereafter threatened complainant-Uniben and her husband to immediately leave the village otherwise they will have to face dire consequences. That on the said incident, offence was registered, investigated and charge-sheet is filed. It may be noted that the petitioner is released on bail and case is pending trial.

4. Over and above the said three registered cases, the grounds of detention contained material regarding information provided by three witnesses on assurance of anonymity. According to the first witness whose statement has been recorded on 16-9-1998, the incident occurred on 8th September, 1998 when witness was returning to his home in the evening at around 7.00 p.m.. That the petitioner in company of his two accomplice was standing on the road near Rasalwada village Patia. The petitioner was armed with a dharia while his accomplice were armed with sticks. At that time one tempo was passing on the road. The petitioner signalled the tempo driver to stop the tempo and asked him to accompany him so as to enable him to transport stones from the mine. That on refusal by the tempo driver, the petitioner was enraged and mounted assault on the driver by beating him with the handle of the dharia. When the witness tried to intervene, the petitioner also caused assault on the witness and on raising alarm by the witness, passengers standing on the bus stand gathered there. At that time the petitioner rushed to the people aiming dharia blow and giving threats to kill whosoever intervenes, and as such people had started running away and the witness also fled away.

According to the information supplied by another witness whose statement was also recorded on 16-9-1998, the incident occurred on 11th September, 1998 when witness was going for his work at around 8.00 a.m. He was passing by a well of the village. The petitioner in

company of three of his accomplice was standing there with lethal weapons. At that time, two persons riding on a motor cycle approached to them. The petitioner and his accomplice stopped the motor-cycle and asked the rider to handover the motor cycle. On refusal by them, the petitioner got enraged and gave kick blows as a result of which person riding the motor cycle fell down on the ground and sustained injury. That the accomplice of the petitioner caused assault on the said person by means of a stick. There was a hubbub and as persons gathered there, the petitioner and his accomplice rushed to the persons with sticks giving threats of dire consequences and as such people ran away. The witness also fled away.

That according to the information supplied by the third witness whose statement is recorded on 26th September, 1998, the incident has occurred on 16th September, 1998 at around 2.00 p.m. When the witness was going to his work he passed through a quarry where he found that many people had gathered. On inquiry the witness learned that in the compound of quarry the petitioner was beating the owner of the quarry for refusing to pay the demanded amount of Rs.5000/-. At that time, the witness tried to intervene. The petitioner got enraged, took out a rampuri knife from his pocket and pointed the same on the chest of the witness. The petitioner then threatened the witness of dire consequences. That on account of the force used by the petitioner armed with knife and the threats given by him, the people who had gathered ran helter-skelter. Taking advantage of this situation, the witness also ran away.

5. On the basis of above stated material as summarized hereinabove, the incident of the three registered cases under the Indian Penal Code and information supplied by three witnesses on assurance of anonymity, the respondent no.1 appears to have come to the conclusion that the petitioner is a " dangerous person" within the meaning of Sec.2(c) of " PASA". That resort to ordinary provisions of law are likely to be ineffective to prevent the nefarious activities of the petitioner which is likely to prejudicially affect the "public order". It is noted in the grounds of detention that two Chapter cases have been registered against the petitioner but as a result of the same only a bond for good behaviour could be taken but no effective mode for preventing the petitioner from continuing his activities could be resorted to and hence on 6th November, 1998, the impugned order has been passed.

6. Learned Advocate Mr. S.R. Patel has made

submissions on numerous grounds on which the impugned order is challenged. However, the ground in respect to unexplained delay in passing the impugned order since last incidents of registered as well as unregistered incidents being substantial the same is construed. Mr. Patel has relied on the observations made by the Supreme Court in the matter of PRADEEP NILKANTH PATURKAR V. S.RAMAMURTHI AND OTHERS, AIR 1994 SC 656 by this Court in the matter of ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997(1) G.L.H. 381.

In the first matter, the Supreme Court having relied on the earlier judgment of HEMLATA KANTILAL SHAH V. STATE OF MAHARASHTRA, (1981) 4 SCC 647 has made the following observations at para 10 of the judgment:

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

That the above stated 2nd decision of this Court is also based on the decision rendered by the Supreme Court in the matter of JAGAN NATH BISWAS V. THE STATE OF WEST BENGAL, AIR 1975 SC 1516 wherein similar observations are made and it has been held that:

"This unexplained delay makes the ground of detention not proximate, vitiating the order of detention itself."

7. In the facts and circumstances of the case, it is required to be noted that the petition was admitted and rule was issued on 8-4-1999. It appears from the record that the respondents are served. However, till today no affidavit-in-reply has been filed on behalf of any of the respondents.

8. Learned A.P.P. Mr. K.T. Dave has expressed his helplessness to explain the inordinate delay in passing the impugned order of detention. In the facts and circumstances of the case, the criminal cases appear to have been registered in the month of February, 1998 while the unregistered incidents appear to be in the month of September, 1998. The statements of witnesses have been recorded on 16-4-1998. It is significant to note that such statements are recorded only after the petitioner was released on bail in all the three registered cases. Thereafter, there is nothing on record to infer as to on

what date the proposal was mooted and the impugned order has been passed.

9. There appears to be considerable delay in passing the impugned order and a live link between the alleged prejudicial activities of the petitioner and passing of the order appears to have been snapped. Hence, following the dictum of the apex Court as contained in the above stated judgment, I hold that the petition deserves to be allowed and the impugned order dated 6-11-1998 passed by the respondent no.1 against the petitioner-Govindbhai Davenbhai Vasava is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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